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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CR-S-05-0113 LKK
)	
v.)	APPLICATION FOR ORDER
)	REGARDING CRIMINAL FORFEITURE
SERGIO CURIEL SR.,)	OF PROPERTY IN GOVERNMENT
CELINA CURIEL,)	CUSTODY - 18 U.S.C. §
SERGIO CURIEL JR.,)	983(a) (3) (B) (ii) (II)
JOSE LUIS CURIEL,)	
EDUARDO PRICE CURIEL,)	
JESUS TAMAYO TAMAYO,)	
TERESA ISORDIA,)	
RAQUEL MONTANEZ ALCAZAR, and)	
RUBEN MONTANEZ,)	
)	
Defendants.)	
)	

The United States of America, through its counsel, hereby moves for an order allowing the government to maintain custody of property already in the government's possession pending the resolution of a criminal forfeiture matter. The grounds for the motion are as follows:

On or about March 10, 2005, law enforcement agents from the Drug Enforcement Administration ("DEA") along with other law enforcement officers executed federal search warrants at various

1 locations. During the search of one of the residences, agents
2 located a safe deposit key inside Celina Curiel's purse. DEA
3 agents seized the following assets on or about March 10, 2005
4 during the execution of the federal search warrants:

- 5 a). Approximately \$138,000 in U.S. Currency seized on or
6 about March 10, 2005, from Bank of Stockton Safe
Deposit Box 289;
- 7 b). Approximately \$75,000 in U.S. Currency seized from a PT
8 Cruiser, California License Number 5KAV268 at the
9 residence located at 2249 Somerset Avenue, Stockton,
CA, on or about March 10, 2005;
- 10 c). Approximately \$923 in U.S. Currency seized from the
11 residence located at 2217 Somerset Drive, Stockton, CA,
on or about March 10, 2005; and
- 12 d). A man's 18K Rolex Oyster Watch seized from the
13 residence located at 2217 Somerset Drive, Stockton, CA,
on or about March 10, 2005.

14 Hereinafter, the above-referenced assets are collectively
15 referred to as the "seized assets".

16 In accordance with 18 U.S.C. § 983(a)(1), the DEA sent
17 notice to defendants Sergio Curiel Sr., Celina Curiel, Jesus
18 Tamayo, Sergio Curiel Jr., Eduardo Curiel, Jose Luis Curiel and
19 Teresa Isordia Sandoval of its intent to forfeit the seized
20 assets in a non-judicial forfeiture proceeding, and caused that
21 notice to be published in a newspaper of general circulation.

22 On or about May 24, 2005, defendant Sergio Toscano Curiel
23 filed a claim contesting the administrative forfeiture of assets
24 a, c, and d above pursuant to 18 U.S.C. § 983(a)(2). On or about
25 May 24, 2005, defendant Celina Curiel filed a claim contesting
26 the administrative forfeiture of assets b and d above pursuant to
27 18 U.S.C. § 983(a)(2).

28 Pursuant to 18 U.S.C. § 983(a)(3), the United States has 90

1 days in which to 1) return the property to the defendant, 2)
2 commence a civil judicial forfeiture action, or 3) commence a
3 criminal forfeiture action by including the seized assets in a
4 criminal indictment. On July 28, 2005, the Government elected
5 the third option when it filed a Superseding Indictment
6 containing a forfeiture allegation concerning the seized assets.
7 That Superseding Indictment is now pending in this Court.

8 Title 18 U.S.C. § 983(a)(3)(B)(ii)(II) provides that when
9 the government elects the third option, it must "take the steps
10 necessary to preserve its right to maintain custody of the
11 property as provided in the applicable criminal forfeiture
12 statute". The applicable forfeiture statute in this case is 21
13 U.S.C. § 853. That statute prescribes several methods for
14 preserving property for the purpose of criminal forfeiture.

15 Section 853(f) authorizes the issuance of a criminal seizure
16 warrant. However, in cases like this one, where the property in
17 question is already in Government custody, it is not appropriate
18 for a court to issue a seizure warrant directing the Government
19 to seize property from itself. In turn, Section 853(e)
20 authorizes the court to issue a restraining order or an
21 injunction to preserve the property for forfeiture. However,
22 that provision is not pertinent because there is no need to
23 enjoin the government from disposing of property that the
24 government has taken into its custody for the purpose of
25 forfeiture, and that the Government intends to preserve for that
26 purpose through the conclusion of the pending criminal case.

27 Finally, Section 853(e)(1) also authorizes a court to "take
28 any other action to preserve the availability of property"

1 subject to forfeiture. The government contends that this
2 provision applies in circumstances where, as here, the government
3 has already obtained lawful custody of the seized assets pursuant
4 to federal search warrants, and the government seeks to comply
5 with Section 983(a)(3)(B)(ii)(II). Thus, all that is required to
6 comply with Section 983(a)(3)(B)(ii)(II) is an order from this
7 Court stating that the United States and its agencies, including
8 DEA and/or the United States Marshals Service, may continue to
9 maintain custody of the seized assets until the criminal case is
10 concluded.

11 Accordingly, pursuant to Section 853(e)(1), the United
12 States respectfully moves this court to issue an order directing
13 that the United States may maintain custody of the seized assets
14 through the conclusion of the pending criminal case, and stating
15 that such order satisfies the requirements of 18 U.S.C.
16 § 983(a)(3)(B)(ii)(II).

17 DATED: 10/11/05

McGREGOR W. SCOTT
United States Attorney

18
19 By: /s/ Mary L. Grad
20 MARY L. GRAD
Assistant U.S. Attorney

21
22 **ORDER**

23 This matter comes before the Court on the motion of the
24 United States for an Order authorizing the government and its
25 agencies to maintain custody of certain property pending the
26 conclusion of the pending criminal case. For the reasons
27 provided in the government's motion, the Court makes the
28 following orders:

1 IT IS HEREBY ORDERED, that the United States and its
2 agencies, including the DEA and/or the U.S. Marshals Service, are
3 authorized to maintain and preserve the following assets until
4 the conclusion of the instant criminal case, or pending further
5 Order of this Court:

- 6 a). Approximately \$138,000 in U.S. Currency seized on or
7 about March 10, 2005, from Bank of Stockton Safe
Deposit Box 289;
- 8 b). Approximately \$75,000 in U.S. Currency seized from a PT
9 Cruiser, California License Number 5KAV268 at the
10 residence located at 2249 Somerset Avenue, Stockton,
CA, on or about March 10, 2005;
- 11 c). Approximately \$923 in U.S. Currency seized from the
12 residence located at 2217 Somerset Drive, Stockton, CA,
on or about March 10, 2005; and
- 13 d). A man's 18K Rolex Oyster Watch seized from the
14 residence located at 2217 Somerset Drive, Stockton, CA,
on or about March 10, 2005.

15 IT IS SO ORDERED.

16 DATED: October 12 ,2005

17 /s/ Lawrence K. Karlton
18 LAWRENCE K. KARLTON
19 UNITED STATES DISTRICT JUDGE
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